

House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 12
HOUSE BILL 2021

AN ACT

REPEALING SECTION 13-610, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 107, SECTION 1; AMENDING SECTION 13-610, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2002, CHAPTER 226, SECTION 2; AMENDING SECTIONS 13-2314.04 AND 41-2419, ARIZONA REVISED STATUTES; RELATING TO CRIMES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Repeal

3 Section 13-610, Arizona Revised Statutes, as amended by Laws 2002,
4 chapter 107, section 1, is repealed.

5 Sec. 2. Section 13-610, Arizona Revised Statutes, as amended by Laws
6 2002, chapter 226, section 2, is amended to read:

7 13-610. Deoxyribonucleic acid testing; exception

8 A. Within thirty days after a person is sentenced to the state
9 department of corrections or a person who is accepted under the interstate
10 compact for the supervision of parolees and probationers arrives in this
11 state, the state department of corrections shall secure a sufficient sample
12 of blood or other bodily substances for deoxyribonucleic acid testing and
13 extraction from the person if the person was convicted of an offense listed
14 in this section and was sentenced to a term of imprisonment or was convicted
15 of any offense that was committed in another jurisdiction that if committed
16 in this state would be a violation of any offense listed in this section and
17 the person is under the supervision of the state department of
18 corrections. The state department of corrections shall transmit the sample
19 to the department of public safety.

20 B. Within thirty days after a person is placed on probation and
21 sentenced to a term of incarceration in a county jail detention facility or
22 is detained in a county juvenile detention facility, the county detention
23 facility shall secure a sufficient sample of blood or other bodily substances
24 for deoxyribonucleic acid testing and extraction from the person if the
25 person was convicted of or adjudicated delinquent for an offense listed in
26 this section. The county detention facility shall transmit the sample to the
27 department of public safety.

28 C. Within thirty days after a person is convicted and placed on
29 probation without a term of incarceration or adjudicated delinquent and
30 placed on probation, the county probation department shall secure a
31 sufficient sample of blood or other bodily substances for deoxyribonucleic
32 acid testing and extraction from the person if the person was convicted of
33 or adjudicated delinquent for an offense listed in this section. The county
34 probation department shall transmit the sample to the department of public
35 safety.

36 D. Within thirty days after the arrival of a person who is accepted
37 under the interstate compact for the supervision of parolees and probationers
38 and who is under the supervision of a county probation department, the county
39 probation department shall secure a sufficient sample of blood or other
40 bodily substances for deoxyribonucleic acid testing and extraction from the
41 person if the person was convicted of an offense that was committed in
42 another jurisdiction that if committed in this state would be a violation of
43 any offense listed in this section and was sentenced to a term of
44 probation. The county probation department shall transmit the sample to the
45 department of public safety.

1 E. Within thirty days after a juvenile is committed to the department
2 of juvenile corrections, the department of juvenile corrections shall secure
3 a sufficient sample of blood or other bodily substances for deoxyribonucleic
4 acid testing and extraction from the youth if the youth was adjudicated
5 delinquent for an offense listed in this section and was committed to a
6 secure care facility. The department of juvenile corrections shall transmit
7 the sample to the department of public safety.

8 F. Within thirty days after the arrival in this state of a juvenile
9 who is accepted by the department of juvenile corrections pursuant to the
10 interstate compact on juveniles and who was adjudicated for an offense that
11 was committed in another jurisdiction that if committed in this state would
12 be a violation of any offense listed in this section, the compact
13 administrator shall request that the sending state impose as a condition of
14 supervision that the juvenile submit a sufficient sample of blood or other
15 bodily substances for deoxyribonucleic acid testing. If the sending state
16 does not impose that condition, the department of juvenile corrections shall
17 request a sufficient sample of blood or other bodily substances for
18 deoxyribonucleic acid testing within thirty days after the juvenile's arrival
19 in this state. The department of juvenile corrections shall transmit the
20 sample to the department of public safety.

21 G. Notwithstanding subsections A through F of this section, the agency
22 that is responsible for securing a sample pursuant to this section shall not
23 secure the sample if the scientific criminal analysis section of the
24 department of public safety has previously received and maintains a sample
25 sufficient for deoxyribonucleic acid testing.

26 H. The department of public safety shall do all of the following:

27 1. Conduct or oversee through mutual agreement an analysis of the
28 samples that it receives pursuant to subsection N, paragraphs 1, 2 and 3 of
29 this section and subsection O, paragraphs 1 and 2 of this section.

30 2. Store the samples it receives pursuant to subsection N, paragraphs
31 4 and 5 of this section and subsection O, paragraphs 3 and 4 of this section
32 and conduct an analysis of the samples on receipt of the funding necessary
33 for this purpose.

34 3. Make and maintain a report of the results of each deoxyribonucleic
35 acid analysis.

36 4. Maintain samples of blood and other bodily substances for at least
37 thirty-five years.

38 I. Any sample and the result of any test that is obtained pursuant to
39 this section may be used only as follows:

40 1. For law enforcement identification purposes.

41 2. In a proceeding in a criminal prosecution or juvenile adjudication.

42 3. In a proceeding under title 36, chapter 37.

43 J. If the conviction of a person who is subject to this section is
44 overturned on appeal or postconviction relief and a final mandate has been
45 issued, on petition of the person to the superior court in the county in

1 which the conviction occurred, the court shall order that the person's
2 deoxyribonucleic acid profile resulting from that conviction be expunged from
3 the Arizona deoxyribonucleic acid identification system established by
4 section 41-2418 unless the person has been convicted of another offense that
5 would require the person to submit to deoxyribonucleic acid testing pursuant
6 to this section.

7 K. If the conviction of a person who is subject to this section is
8 classified as a misdemeanor pursuant to section 13-702, on petition of the
9 person to the superior court in the county in which the conviction occurred,
10 the court shall order that the person's deoxyribonucleic acid profile
11 resulting from that conviction be expunged from the Arizona deoxyribonucleic
12 acid identification system unless the person has been convicted of another
13 offense that would require the person to submit to deoxyribonucleic acid
14 testing pursuant to this section.

15 L. A person who was convicted or adjudicated delinquent before the
16 applicable date provided in this section for any offense for which a
17 sufficient sample of blood or other bodily substance for deoxyribonucleic
18 acid testing and extraction is required to be secured shall have a sample
19 secured if the person is in the custody of the state department of
20 corrections, the department of juvenile corrections or a county jail
21 detention facility or who is under the supervision of a probation department
22 on the applicable date listed in subsection N OR O of this section. The
23 sample shall be secured within one hundred eighty days after the applicable
24 date listed in subsection N OR O OF THIS SECTION.

25 M. If any sample that is submitted to the department of public safety
26 under this section is found to be unacceptable for analysis and use or cannot
27 be used by the department, the department shall require that another sample
28 of blood or other bodily substances be secured pursuant to this section.

29 N. This section applies to persons who are convicted of the following
30 offenses:

31 1. A violation of or an attempt to violate any offense in chapter 11
32 of this title, any felony offense in chapter 14 or 35.1 of this title or
33 section 13-1507, 13-1508 or 13-3608.

34 2. Any offense for which a person is required to register pursuant to
35 section 13-3821.

36 3. Any offense involving the discharge, use or threatening exhibition
37 of a deadly weapon or dangerous instrument or the intentional or knowing
38 infliction of serious physical injury as provided in section 13-604.

39 4. ~~Beginning on January 1, 2003,~~ A violation of any felony offense in
40 chapter 34 of this title.

41 5. Beginning on January 1, 2004, a violation of any felony offense.

42 O. This section applies to persons who are adjudicated delinquent for
43 the following offenses:

1 1. A violation or an attempt to violate any offense in chapter 11 of
2 this title, any felony offense in chapter 14 or 35.1 of this title or section
3 13-1507, 13-1508 or 13-3608.

4 2. Any offense for which a person is required to register pursuant to
5 section 13-3821.

6 3. ~~Beginning on January 1, 2003,~~ A violation of any felony offense in
7 chapter 34 of this title that is MAY BE prosecuted pursuant to section
8 13-501, subsection B, paragraph 2.

9 4. Beginning on January 1, 2004, a violation of any felony offense
10 that is listed in section 13-501.

11 Sec. 3. Section 13-2314.04, Arizona Revised Statutes, is amended to
12 read:

13 13-2314.04. Racketeering; unlawful activity; civil remedies by
14 private cause of action; definitions

15 A. A person who sustains reasonably foreseeable injury to his person,
16 business or property by a pattern of racketeering activity, or by a violation
17 of section 13-2312 involving a pattern of racketeering activity, may file an
18 action in superior court for the recovery of up to treble damages and the
19 costs of the suit, including reasonable attorney fees for trial and appellate
20 representation. If the person against whom a racketeering claim has been
21 asserted, including a lien, prevails on that claim, the person may be awarded
22 costs and reasonable attorney fees incurred in defense of that claim. No
23 person may rely on any conduct that would have been actionable as fraud in
24 the purchase or sale of securities to establish an action under this section
25 except an action against a person who is convicted of a crime in connection
26 with the fraud, in which case the period to initiate a civil action starts
27 to run on the date on which the conviction becomes final.

28 B. The superior court has jurisdiction to prevent, restrain and remedy
29 a pattern of racketeering activity or a violation of section 13-2312
30 involving a pattern of racketeering activity, after making provision for the
31 rights of all innocent persons affected by the violation and after a hearing
32 or trial, as appropriate, by issuing appropriate orders.

33 C. Before a determination of liability these orders may include, but
34 are not limited to, entering restraining orders or prohibitions or taking
35 such other actions, including the acceptance of satisfactory performance
36 bonds, the creation of receiverships and the enforcement of constructive
37 trusts, in connection with any property or other interest subject to damage
38 or other remedies or restraints pursuant to this section as the court deems
39 proper.

40 D. After a determination of liability these orders may include, but
41 are not limited to:

42 1. Ordering any person to divest himself of any interest, direct or
43 indirect, in any enterprise.

44 2. Imposing reasonable restrictions on the future activities or
45 investments of any person, including prohibiting any person from engaging in

1 the same type of endeavor as the enterprise engaged in, the activities of
2 which affect the laws of this state, to the extent the constitutions of the
3 United States and this state permit.

4 3. Ordering dissolution or reorganization of any enterprise.

5 4. Ordering the payment of up to treble damages to those persons
6 injured by a pattern of racketeering activity or a violation of section
7 13-2312 involving a pattern of racketeering activity.

8 5. Prejudgment interest on damages, except that prejudgment interest
9 may not be awarded on any increase in the damages authorized under paragraph
10 4 of this subsection.

11 6. A person or enterprise that acquires any property through an
12 offense included in the definition of racketeering in section 13-2301,
13 subsection D or a violation of section 13-2312 is an involuntary
14 trustee. The involuntary trustee and any other person or enterprise, except
15 a bona fide purchaser for value who is reasonably without notice of the
16 unlawful conduct and who is not knowingly taking part in an illegal
17 transaction, hold the property, its proceeds and its fruits in constructive
18 trust for the benefit of persons entitled to remedies under this section.

19 E. A defendant convicted in any criminal proceeding is precluded from
20 subsequently denying the essential allegations of the criminal offense of
21 which the defendant was convicted in any civil proceedings. For the purpose
22 of this subsection, a conviction may result from a verdict or plea including
23 a no contest plea.

24 F. Notwithstanding any law prescribing a lesser period but subject to
25 subsection A of this section, the initiation of civil proceedings pursuant
26 to this section shall be commenced within three years from the date the
27 violation was discovered, or should have been discovered with reasonable
28 diligence, and ten years after the events giving rise to the cause of action,
29 whichever comes first.

30 G. The standard of proof in actions brought pursuant to this section
31 is the preponderance of evidence test.

32 H. A person who files an action under this section shall serve notice
33 and one copy of the pleading on the attorney general within thirty days after
34 the action is filed with the superior court. This requirement is
35 jurisdictional. The notice shall identify the action, the person and the
36 person's attorney. Service of the notice does not limit or otherwise affect
37 the right of the state to maintain an action under section 13-2314 or to
38 intervene in a pending action nor does it authorize the person to name this
39 state or the attorney general as a party to the action.

40 I. On timely application, the attorney general may intervene in any
41 civil action or proceeding brought under this section if the attorney general
42 certifies that in the attorney general's opinion the action is of special
43 public importance. On intervention, the attorney general may assert any
44 available claim and is entitled to the same relief as if the attorney general
45 has instituted a separate action.

1 J. In addition to the state's right to intervene as a party in any
2 action under this section, the attorney general may appear as amicus curiae
3 in any proceeding in which a claim under this section has been asserted or
4 in which a court is interpreting section 13-2301, 13-2312, 13-2313,
5 13-2314.01, 13-2314.02 or 13-2315 or this section.

6 K. A civil action authorized by this section is remedial and not
7 punitive and does not limit and is not limited by any other previous or
8 subsequent civil or criminal action under this title or any other provision
9 of law. Civil remedies provided under this title are supplemental and not
10 mutually exclusive, except that a person may not recover, for an action
11 brought pursuant to this section, punitive damages or emotional injury
12 damages in the absence of bodily injury.

13 L. A natural person shall not be held liable in damages or for other
14 relief pursuant to this section based on the conduct of another unless the
15 fact finder finds by a preponderance of the evidence that the natural person
16 authorized, requested, commanded, ratified or recklessly tolerated the
17 unlawful conduct of the other. An enterprise shall not be held liable in
18 damages or for other relief pursuant to this section based on the conduct of
19 an agent, unless the fact finder finds by a preponderance of the evidence
20 that a director or high managerial agent performed, authorized, requested,
21 commanded, ratified or recklessly tolerated the unlawful conduct of the
22 agent. A bank or savings and loan association insured by the federal deposit
23 insurance corporation or a credit union insured by the national credit union
24 administration shall not be held liable in damages or for other relief
25 pursuant to this section for conduct proscribed by section 13-2317,
26 subsection A- B, paragraph 1, based on acquiring or maintaining an interest
27 in or transporting, transacting, transferring or receiving funds belonging
28 to a person other than the person presenting the funds, unless the fact
29 finder finds by a preponderance of the evidence that the person or agent
30 acquiring or maintaining an interest in or transporting, transacting,
31 transferring or receiving the funds on behalf of the defendant did so knowing
32 that the funds were the proceeds of an offense and that a director or high
33 managerial agent performed, authorized, requested, commanded, ratified or
34 recklessly tolerated the unlawful conduct of the person or agent. A person
35 or enterprise shall not be held liable in damages or for other relief
36 pursuant to this section unless the fact finder makes particularized findings
37 sufficient to permit full and complete review of the record, if any, of the
38 conduct of the person. A natural person or enterprise shall not be held
39 liable in damages for recklessly tolerating the unlawful conduct of another
40 person or agent if the other person or agent engaged in unlawful conduct
41 proscribed by section 13-2301, subsection D, paragraph 4, subdivision (b),
42 item (xvi), (xviii), (xix) or (xx) and the unlawful conduct involved the
43 purchase or sale of securities.

44 M. Notwithstanding subsection A of this section, a court shall not
45 award costs, including attorney fees, if the award would be unjust because

1 of special circumstances, including the relevant disparate economic position
2 of the parties or the disproportionate amount of the costs, including
3 attorney fees, to the nature of the damage or other relief obtained.

4 N. If the court determines that the filing of any pleading, motion or
5 other paper under this section was frivolous or that any civil action or
6 proceeding was brought or continued under this section in bad faith,
7 vexatiously, wantonly or for an improper or oppressive reason, it shall award
8 a proper sanction to deter this conduct in the future that may include the
9 costs of the civil action or proceeding, including the costs of investigation
10 and reasonable attorney fees in the trial and appellate courts.

11 O. Notwithstanding any other law, a complaint, counterclaim, answer
12 or response filed by a person in connection with a civil action or proceeding
13 under this section shall be verified by at least one party or the party's
14 attorney. If the person is represented by an attorney, at least one attorney
15 of record shall sign any pleading, motion or other paper in the attorney's
16 individual name and shall state the attorney's address.

17 P. The verification by a person or the person's attorney and the
18 signature by an attorney required by subsection O of this section constitute
19 a certification by the person or the person's attorney that the person or the
20 person's attorney has carefully read the pleading, motion or other paper and,
21 based on a reasonable inquiry, believes all of the following:

22 1. It is well grounded in fact.

23 2. It is warranted by existing law or there is a good faith argument
24 for the extension, modification or reversal of existing law.

25 3. It is not made for any bad faith, vexatious, wanton, improper or
26 oppressive reason, including to harass, to cause unnecessary delay, to impose
27 a needless increase in the cost of litigation or to force an unjust
28 settlement through the serious character of the averment.

29 Q. If any pleading, motion or other paper is signed in violation of
30 the certification provisions of subsection P of this section, the court, on
31 its own motion or on the motion of the other party and after a hearing and
32 appropriate findings of fact, shall impose on the person who verified it or
33 the attorney who signed it, or both, a proper sanction to deter this conduct
34 in the future, including the costs of the proceeding under subsection N of
35 this section.

36 R. If any pleading, motion or other paper includes an averment of
37 fraud or coercion, it shall state these circumstances with particularity with
38 respect to each defendant.

39 S. In any civil action or proceeding under this section in which the
40 pleading, motion or other paper does not allege a crime of violence as a
41 racketeering act:

42 1. The term "racketeer" shall not be used in referring to any person.

43 2. The terms used to refer to acts of racketeering or a pattern of
44 racketeering activity shall be "unlawful acts" or "a pattern of unlawful
45 activity".

1 T. In this section, unless the context otherwise requires:

2 1. "Acquire" means for a person to do any of the following:

3 (a) Possess.

4 (b) Act so as to exclude another person from using the person's
5 property except on the person's own terms.

6 (c) Bring about or receive the transfer of any interest in property,
7 whether to himself or to another person, or to secure performance of a
8 service.

9 2. "Gain" means any benefit, interest or property of any kind without
10 reduction for expenses of acquiring or maintaining it or incurred for any
11 other reason.

12 3. "Pattern of racketeering activity" means either:

13 (a) At least two acts of racketeering as defined in section 13-2301,
14 subsection D, paragraph 4, subdivision (b), item (iv), (v), (vi), (vii),
15 (viii), (ix), (x), (xiii), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxiv)
16 or (xxvi) that meet the following requirements:

17 (i) The last act of racketeering activity that is alleged as the basis
18 of the claim occurred within five years of a prior act of racketeering.

19 (ii) The acts of racketeering that are alleged as the basis of the
20 claim were related to each other or to a common external organizing
21 principle, including the affairs of an enterprise. Acts of racketeering are
22 related if they have the same or similar purposes, results, participants,
23 victims or methods of commission or are otherwise interrelated by
24 distinguishing characteristics.

25 (iii) The acts of racketeering that are alleged as the basis of the
26 claim were continuous or exhibited the threat of being continuous.

27 (b) A single act of racketeering as defined in section 13-2301,
28 subsection D, paragraph 4, subdivision (b), item (i), (ii), (iii), (xi),
29 (xii), (xiv), (xxi), (xxii), (xxiii), (xxv), (xxvii) or (xxviii).

30 4. "Proceeds" means any interest in property of any kind acquired
31 through or caused by an act or omission, or derived from the act or omission,
32 directly or indirectly, and any fruits of this interest, in whatever form.

33 Sec. 4. Section 41-2419, Arizona Revised Statutes, is amended to read:

34 41-2419. Arizona deoxyribonucleic acid identification system
35 fund

36 A. The Arizona deoxyribonucleic acid identification system fund is
37 established. The Arizona deoxyribonucleic acid identification system fund
38 consists of monies collected pursuant to section 12-116.01 and distributed
39 pursuant to section 41-2401, subsection D, paragraph 6, monies collected
40 pursuant to section 12-116.01, subsection C and distributed pursuant to
41 section 12-116.01, subsection J, ~~monies deposited pursuant to section 13-610~~
42 and monies contributed to the fund from any other source. On notice from the
43 department of public safety, the state treasurer shall invest and divest
44 monies in the fund as provided by section 35-313, and monies earned from
45 investment shall be credited to the fund.

1 B. The department of public safety shall administer the fund.

2 C. Subject to legislative appropriation, monies in the fund shall be
3 used for implementing, operating and maintaining deoxyribonucleic acid
4 testing and for the costs of administering the system.

5 Sec. 5. Retroactivity

6 Section 13-2314.04, Arizona Revised Statutes, as amended by this act,
7 applies retroactively to August 22, 2002.

APPROVED BY THE GOVERNOR MARCH 28, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MARCH 28, 2003.

Passed the House January 27, 2003

Passed the Senate March 20, 2003

by the following vote: 58 Ayes,

by the following vote: 26 Ayes,

0 Nays, 1 Not Voting
1 VACANCY

0 Nays, 4 Not Voting

Jake Flake
Speaker of the House

Ken Blunt
President of the Senate

Gorman G. Fyooce
Chief Clerk of the House

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

24 day of March, 2003

at 3:12 o'clock P M.

Sandra Gomez
Secretary to the Governor

Approved this 28 day of

March, 2003,

at 8⁰⁰ o'clock A M.

J. A. Nagel
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 28th day of March, 2003,

at 3:02 o'clock P M.

Janice K. Brewer
Secretary of State